U.S. Department of Labor

Office of Administrative Law Judges
St. Tammy Courthouse Annex
428 E. Boston Street, 1st Floor
Covington, Louisiana 70433

(985) 809-5173
(985) 893-7351 (FAX)

Issue Date: 01 June 2006

CASE NO.: 2005-LHC-1069

OWCP NO.: 07-156330

IN THE MATTER OF

JESSIE L. MATHES,
Claimant

v.

NORTHROP GRUMMAN,
Employer

and

AVONDALE INDUSTRIES, INC.,
c/o F.A. Richard & Associates,
Carrier

APPEARANCES:

Christopher Schwartz, Esq.
On behalf of Claimant

Frank Towers, Esq.
On behalf of Employer

BEFORE: CLEMENT J. KENNINGTON
ADMINISTRATIVE LAW JUDGE

DECISION AND ORDER AWARDING BENEFITS

This is a claim for benefits under the Longshore and Harbor Workers' Compensation Act (the Act), 33 U.S.C. § 901, *et seq*., (2000) brought by Jessie L. Mathes (Claimant) against Northrop Grumman (Employer), and Avondale Industries, Inc., FARA (Carrier). The issues

raised by the parties could not be resolved administratively, and the matter was referred to the Office of Administrative Law Judges for a formal hearing. The hearing was held on February 1, 2006 in Covington, Louisiana.

At the hearing all parties were afforded the opportunity to adduce testimony, offer documentary evidence, and submit post-hearing briefs in support of their positions. Claimant and vocational experts Alan Crane and Michael Nebe testified live. Claimant introduced 8 exhibits which were admitted, including DOL forms (LS-206 and LS-208); Employer's response to discovery,; vocational reports from Gary Ordes and Allen Crane; medical records from Dr. Deryk Jones and Tulane University Hospital; correspondence from FARA and Claimant's wage records from Employer. Employer introduced 17 exhibits including various DOL forms; Claimant's response to discovery; an FCE of Claimant dated October 21, 2004; first aid records from Employer; medical records and depositions from Drs. Megan Ciota, Ralph Katz, Deryk Jones, Mitchell Biltz; Claimant's personnel and payroll records; vocational reports; medical records from Tulane University Hospital, Ochsner Clinic, and West Jefferson Medical Center.[1]

Post-hearing briefs were filed by the parties. Based upon the stipulations of the parties, the evidence introduced my observation of the witness demeanor, and the arguments presented, I make the following Findings of Fact, Conclusions of Law, and Order.

I. STIPULATIONS

At the commencement of the hearing the parties stipulated and I find:

1. Claimant was injured on March 31, 2000.

2. The injury occurred during the course and scope of his employment as an employee of Employer.

3. Employer was advised of Claimant's injury on March 31, 2000.

4. Employer filed a Notice of Controversion on May 25, 2001.

5. An informal conference took place on October 30, 2001.

6. Claimant's average weekly wage at the time of injury was $564.80.

7. Employer paid temporary total disability benefits from April 21, 2000 to June 26, 2000; July 20, 2000 to July 24, 2000; November 30, 2000 to January 8, 2004. Employer paid

[1] References to the record are as follows: Claimant's exhibits- CX-; Employer exhibits- EX-; Administrative Law Judge exhibit- ALJX; transcript- Tr.

Claimant 57.6 weeks of benefits for a permanent partial scheduled 20% disability of the left knee commencing January 22, 2004. (CX-7, EX-1).

8. Claimant reached maximum medical improvement on January 8, 2004.

II. ISSUES

The following unresolved issues were presented by the parties:

1. Nature and extent of injury.

2. Whether Employer established the existence of suitable alternative employment.

3. Attorney's fees.

III. STATEMENT OF THE CASE

A. Chronology:

On December 4, 1997, Employer hired Claimant as a sandblaster. (CX-1, pp. 36, 37; EX-11). On March 31, 2000, Claimant while working as a sandblaster in a blast cage twisted and injured his left knee. (CX-1, p. 22). On May 16, 2000, Dr. Ralph Katz operated on Claimant's left knee performing a left knee partial mediolateral menisectomy with debridement of patellofemoral joint. (EX-4, 49; CX-8, p. 21; EX-6). On May 9, 1991, Dr. Jones performed a left knee arthroscopic debridement followed by a left knee medial meniscal reconstruction and left knee auteologos chondrocyte implantation on July 11, 2001 and another debridement on February 20, 2002. (CX-8, p. 38, 40, 43). On January 8, 2003 Dr. Jones performed a left total knee arthroplasty. (CX-4, p. 4).[2]

On October 21, 2004 Claimant underwent a functional capacity evaluation by Mitchel Blitz resulting in the following residual functional capacity: sedentary work from the floor and medium-heavy work from knuckle level with occasional one hand carrying of up to 20 pounds, occasional rest break from standing and walking, use of assistive devices (cane) for ambulation. (EX-3).

On April 13, 2004, Claimant saw Dr. Jones at which time Dr. Jones issued a report finding Claimant at maximum medical improvement as of January 8, 2004 with a 10% whole body impairment and a 25% left lower extremity impairment. (CX-4, p. 3). On August 10, 2005

[2] EX-13 contains 182 pages of details of Claimant's surgeries by Dr. Jones at Tulane University Hospital.

psychologist Megan Ciota at Employer's request performed a pain/psychological evaluation of Claimant. Claimant underwent a variety of tests including a Wechsler Adult intelligence Scale III, Wide Range Achievement test and other cognitive tests. Intellectual testing showed a full scale IQ of 72 with a verbal score of 65 and a performance IQ of 85. Nevertheless, Dr. Ciota found Claimant to possess a good ability to learn and remember information that is orally or visually presented. (EX-5, p. 17). Dr. Ciota diagnosed a pain disorder with psychological and medical factors and alcohol abuse.

On November 23, 2004, Dr. Jones issued a report setting forth the following limitations: Sedentary with limited ability to walk for prolonged periods of time, a need for rest, inability to lift greater than 20 pounds with one hand, use of a cane for ambulation with a 20% impairment of left lower extremity. (EX-8).

B. Claimant's Testimony

Claimant is a 51 year old male residing in Vicksburg, Mississippi. He has an 8th grade formal education, but did poorly in school having to repeat several grades and quitting at age 17. Claimant professes an inability to read or write and handle finances. (Tr. 30-35). Claimant's past work consisted of painting/sand blasting for Employer and Vicksburg Chemical and Hudco preceded by tanker man duties, barge loading and unloading, residential wiring, and deckhand work. (Tr. 37, 38, 48, 49).

Claimant testified that he underwent several knee surgeries including a total left knee replacement. (Tr. 39). Claimant uses a cane to walk and admittedly has not looked for work since his March 31, 2000 injury because of ongoing medical treatment. (Tr. 52). Claimant testified he can stand for 35 minutes, and sit for an hour, but cannot work because of his knee impairment combined with illiteracy. (Tr. 41, 42). Claimant twisted his left knee while at work. Claimant is receiving Social Security disability benefits.

On cross Claimant admitted receiving no medical treatment or pain medication in 2006. Claimant also admitted working for Employer as a foreman for about two months during which he supervised a crew of 8 to 10 men directing them where to clean. (Tr. 54, 55, 57). When taking medication Claimant took up to 6 Percocets per day.

C. Testimony of Alan Crane and Michael Nebe

Mr. Crane, a licensed vocation rehabilitation counselor, evaluated Claimant at his attorney's request.[3] Mr. Crane testified that Claimant has very limited reading, spelling and arithmetic abilities and according to Dr. Jones is limited to sedentary activity needing a cane for ambulation. (Tr. 63, 64).

[3] On August 16, 2005, Mr. Crane issued a vocational analysis of Claimant as CX-4. The report mirrors his live testimony showing Claimant's prognosis for returning to work as poor due to multiple physical and mental restrictions.

Mr. Crane administered the Wide Range Achievement Test and it showed Claimant functioning on the kindergarten level with regard to reading and spelling, and on the third grade level with arithmetic. (Tr. 69). Vocationally Mr. Crane found Claimant able to perform semi-skilled to unskilled repetitive work. (Tr. 71). However he opined it would be very difficult if not improbable for Claimant to find work considering his restriction to sedentary work, the inability to drive and his illiteracy. (Tr. 72). Further, Claimant could not perform the jobs listed on the labor market survey of Gary Ordes of January, 2005, including dispatcher, or receptionist. (Tr. 73, 80).

Mr. Crane further testified that Dr. Ciota tested Claimant's intelligence and it showed a verbal score of 65 and a performance score of 72 with the verbal score indicating mild mental retardation. (Tr. 77). Mr. Crane performed no labor market survey and did not attempt to find work for Claimant. (Tr. 79). Mr. Crane testified that he had not read Dr. Ciota's deposition and had not thoroughly reviewed her report on Claimant. (Tr. 80-84). However, Claimant would not have the ability to be a cashier since that work requires a 4 to 6 grade level in reasoning, math and language according to DOL standards. (Tr. 92-94). Mr. Crane testified that Claimant's age (51), as well as his absence from the work force for 4 to 5 years, combined with a lack of a driver's license to impose additional work limitations. (Tr. 101, 102).

Mr. Crane further testified that he doubted the appropriateness of jobs identified by Mr. Nebe for the following reasons: McDonald's cashier (inability to process credit card transactions) hair shampooing (too much standing); meat cutter (too much standing and handling of sharp objects. (Tr. 136, 137, 142-145). Mr. Crane encouraged Claimant to attend free adult education so as to enhance his reading and math abilities. (Tr. 138-141).

Mr. Crane admitted that Claimant's chances of getting a job at McDonald's or Burger King as a cashier were better post Katrina, but his likelihood of retaining such a job was improbable. (Tr. 148, 149). Mr. Crane further admitted Claimant could be considered for a meat cutter position if such a position allowed Claimant to sit and did not have to ambulate. (Tr. 158, 159).

Mr. Nebe, who is also a license rehabilitation counselor, testified on behalf of Employer stating that he had reviewed the January 14, 2005 report of Gary Ordes along Ordes and Ms. Dot Moffat's files, and the medical records of Drs. Katz, Sanchez, and Jones plus depositions of Claimant, Dr. Cioto, Crane, and Biltz. According to Mr. Nebe, most of the jobs identified by Ordes were inappropriate because he assumed Claimant could read and write. (Tr. 104-106).

According to Mr. Nebe, the labor market report of Ms. Moffat-Douglas (EX-16, pp. 57-60), was complete and considered Claimant's illiteracy, but still identified four cashier positions. Mr. Nebe agreed with Mr. Crane that the Dictionary of Occupational Titles (DOT) required a 4 to 6 grade educational level for cashier positions, but testified that the DOT did not list cashier positions such as exist at McDonald's which has food pictures on the register. Mr. Nebe testified that Claimant could do all the jobs approved by Dr. Cioto in her September 26, 2005 report which jobs Mr. Nebe verified as existing. (Tr. 109-111). These jobs included: cashier at Royal Sonesta Hotel paying $6.50 an hour; cashier at Standard parking; and cashier at Central Parking and Tropic Car Wash, all paying $6.50 per hour for full time work in the New Orleans area.

Mr. Nebe testified that Claimant was able to qualify for all cashier positions but would still have a great deal of difficulty in finding employment. However, with diligence and acquisition of job seeking skills, Claimant could still find work. Mr. Nebe testified that generally cashier positions were beyond Claimant's abilities. (Tr. 112, 113). However, he found the following jobs in the New Orleans area which he considered appropriate: shampoo person at Homewood Suites (sitting on chair when shampooing, making $6.00 per hour); Burger King Cashier ($6.00 to $8.00 per hour); deli clerk at Zara's Food Mart (sitting allowed between customers, $6.00 per hour); and floral design helper. (Tr. 115, 119).

On cross Mr. Nebe admitted the shampoo job involved mostly standing, but then, said it was mostly a sedentary position. (Tr. 122, 123). Mr. Nebe admitted that some cashier positions at Burger King involved use of credit cards, but he did not know if the position he identified took credit cards. (Tr. 124). Mr. Nebe also did not know if the other cashier positions involved use of credit cards. (Tr. 126). When questioned about the realistic chance for Claimant to obtain the jobs he identified, Mr. Nebe testified he did not have an answer. (Tr.134).

D. Labor Market Surveys

On January 14, 2005, vocational rehabilitation counselor, Gary Ordes, produced a labor market survey on behalf of Employer. In that report, Mr. Ordes notes that Dr. Jones, Claimant's treating orthopedist, restricted Claimant to sedentary work with limited ability to walk, a need for rest, lifting 20 pounds, use of a cane for ambulation and that an functional capacity performed on October 21, 2004 by Mr. Mathes showed Claimant able to work at a sedentary level from the floor and a medium to heavy level from the knuckle level with occasional carrying of 20 pounds, occasional rest breaks from standing and walking and use of a cane for ambulation. Mr. Ordes assumed Claimant could read and write. Mr. Ordes identified the following jobs as suitable: dispatcher for Pop-A- Lock, Federal Pilots, Bayou Periodicals; receptionist for Metairie Small Animal Hospital, Fantastic Sam's; central station alarm monitor for Certified Security Systems and call center representative for Louisiana AAST. None of the jobs listed showed exertional requirements. (CX-1, pp.17-21, CX-2, EX-17).

Employer also introduced a labor market survey of Ms. Moffett-Douglas dated September 26, 2005, in which she identified the following jobs apparently available during the week of August 22-26, 2005: garage cashier (Royal Sonesta), parking lot cashier (Standard Parking,Central Parking), and cashier (Tropic Car Wash). Alleged these jobs were within Claimant's restrictions and paid $5.75 to 6.50 per hour. (EX-16, pp. 57-59).

E. Testimony of Drs. Katz, Ciota, and Mr. Mitchell Blitz

Dr. Katz saw Claimant on April 17, May 11, 26, June 5, 22, July 19, August 3, 10, 17, 28 and December 6, 2000 for left knee complaints. Upon initial examination Claimant favored his left knee when walking, lacked full knee extension, and had a positive McMurray sign indicative of a meniscal tear. (EX-14, p. 7). Dr. Katz prescribed Lodine and Tylenol 3 and injected his

knee for pain relief. Dr. Katz had Claimant undergo a MRI of the left knee which confirmed tears of the medial and lateral meniscus. Dr. Katz operated on Claimant on May 16, 2000 performing medial and lateral meniscectomies. On subsequent visits, Dr. Katz injected the knee, but Claimant still complained of knee problems. Dr. Katz was not able to comment on work restrictions since he last saw Claimant on December 6, 2000 after which Claimant was treated by Dr. Jones.

Psychologist, Dr. Ciota, performed a psychological pain evaluation of Claimant at the request of Employer's Counsel on August 10, 2005. Dr. Ciota interviewed Claimant learning about his injury, school problems dropping out in the 8th grade followed by unsuccessful attempts at adult reading education courses. (EX-16, p.13). Testing results showed the following: WAIS-full scale-72, verbal-65, performance-85; WRAT-reading at kindergarten level; no math testing; good ability to learn information after "some learning trials." (Id. at 17-29). As far as Claimant's ability to do cashier work, Dr. Ciota deferred to vocational experts but opined that Claimant from a cognitive perspective could do jobs identified by Ms. Moffett Douglas in a September 26, 2005 labor market survey including parking lot cashier, and cashier at car wash. (Id. at 30, 39-42). MMPI tests showed a reluctance to admit psychological problems. Dr. Ciota diagnosed pain disorder related to psychological and medical factors. (Id. at 37).

Mr. Biltz, a physical therapist, who performed the functional capacity evaluation of Claimant at Dr. Jones request on October 21, 2004, testified that he interviewed Claimant about his injury, medical history, and limitations followed by a physical assessment of Claimant's lifting, carrying, reaching, pushing, pulling, postural tolerances and computerized testing. The testing showed Claimant at the sedentary level from the floor level and medium to heavy from knuckle level taking 6 to 8 hours to complete. The test also showed a need for occasional rest breaks from standing and walking with a need for a cane for ambulation. (EX-15).

IV. DISCUSSION

A. Contention of the Parties

Employer contends that it established suitable alternative employment through 3 vocational experts, Mr. Ordes, Nebe, and Ms. Moffit-Douglas. Further, Claimant did not attempt to find work since March 31, 2000. Employer argues that once Claimant shows an inability to perform his past work all it has to show is a reasonable expectation of being hired and not any ability to retain or maintain that position.

Claimant's counsel on the other hand contends that Claimant is illiterate functioning at the mild mental retardation classification with limitations to sedentary work requiring use of a cane, no driver's license. All of these limitations including his age, work background and absence from the work force for about 5 years preclude gainful employment

B. Credibility of Parties

It is well-settled that in arriving at a decision in this matter the finder of fact is entitled to determine the credibility of the witnesses, to weigh the evidence and draw his own inferences from it, and is not bound to accept the opinion or theory of any particular medical examiner. *Banks v. Chicago Grain Trimmers Association, Inc.*, 390 U.S. 459, 467 (1968); *Louisiana Insurance Guaranty Ass'n v. Bunol*, 211 F.3d 294, 297 (5th Cir. 2000); *Hall v. Consolidated Employment Systems, Inc.*, 139 F.3d 1025, 1032 (5th Cir. 1998); *Atlantic Marine, Inc. v. Bruce*, 551 F.2d 898, 900 (5th Cir. 1981); *Arnold v. Nabors Offshore Drilling, Inc.*, 35 BRBS 9, 14 (2001). Any credibility determination must be rational, in accordance with the law and supported by substantial evidence based on the record as a whole. *Banks*, 390 U.S. at 467, 88 S. Ct. at 1145-46; *Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 945 (5th Cir. 1991); *Huff v. Mike Fink Restaurant, Benson's Inc.*, 33 BRBS 179, 183 (1999).

In this case, I was not impressed the vocational experts utilized by Employer for the following reasons. The first vocational expert employed by Employer, Gary Ordes, made no attempt to assess Claimant's mental limitations and erroneously assumed Claimant could read and write, when in fact, Claimant was illiterate. Thus, none of the jobs identified by Mr. Ordes were appropriate because all assumed the ability to read and write. They included dispatcher, receptionist, central station alarm monitor, and call center representative. The second vocational expert utilized by Employer, Ms. Moffett Douglas, failed to assess Claimant's math abilities which were limited to the third grade level and listed jobs of cashier which according to the D.O.T. and Mr. Crane's testimony required math skills at the 4 to 6 grade level. The third vocational expert, Mr. Nebe made no assessment of Claimant's math skills, failed to inquire whether the cashier jobs he identified required abilities to deal with credit cards, and thus, the ability to read. Further, the jobs he identified other that cashier were inappropriate; (hair shampooing and meat cutter) required either two much standing or involved handling of sharp objects which would present health risks when Claimant had to walk or stand necessitating use of a .cane.

Mr. Crane on the other hand was the only vocational expert to correctly assess Claimant's limited math skills and to consider in addition to limited physical skills reducing Claimant to sedentary work with a need to ambulate Claimant's inability to drive along with his age, absence from the work force, and illiteracy. I was impressed with Crane's straightforward testimony and credit his assessment that it would be very difficult, if not improbable, for Claimant to find work.

C. *Prima Facie* Case of Total Disability

In this case there is no question that Claimant is unable to perform his past relevant work of sandblaster/painter due to his work related knee injury followed by multiple knee surgeries leading to a total knee replacement. The question is whether Employer has shown the existence of suitable alternative employment, such that Claimant is entitled to only a schedule award for a 20 % permanent impairment to his left lower extremity.

The Act does not provide standards to distinguish between classifications or degrees of disability. Case law has established that in order to establish a *prima facie* case of total disability under the Act, a claimant must establish that he can no longer perform his former longshore job due to his job-related injury. *New Orleans (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031, 1038 (5th Cir. 1981); *P&M Crane Co., v. Hayes*, 930 F.2d 424, 429-30 (5th Cir. 1991); *SGS Control Serv., v. Director, OWCP*, 86 F.3d 438, 444 (5th Cir. 1996). He need not establish that he cannot return to *any* employment, only that he cannot return to his former employment. *Elliot v. C&P Telephone Co.*, 16 BRBS 89 (1984). The same standard applies whether the claim is for temporary or permanent total disability. If a claimant meets this burden, he is presumed to be totally disabled. *Walker v. Sun Shipbuilding & Dry Dock Co.*, 19 BRBS 171 (1986).

Once the *prima facie* case of total disability is established, the burden shifts to the employer to establish the availability of suitable alternative employment. *Turner*, 661 F.2d at 1038; *P&M Crane*, 930 F.2d at 430; *Clophus v. Amoco Prod. Co.*, 21 BRBS 261, 265 (188). Total disability becomes partial on the earliest date on which the employer establishes suitable alternative employment. *SGS Control Serv.*, 86 F.3d at 444; *Palombo v. Director, OWCP*, 937 F.2d 70, 73 (D.C. Cir. 1991); *Rinaldi v. General Dynamics Corp.*, 25 BRBS 128, 131 (1991). A finding of disability may be established based on a claimant's credible subjective testimony. *Director, OWCP v. Vessel Repair, Inc.*, 168 F.3d 190, 194 (5th Cir. 1999) (crediting employee's reports of pain); *Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 944-45 (5th Cir. 1991) (crediting employee's statement that he would have constant pain in performing another job). An employer may establish suitable alternative employment retroactively to the day when the claimant was able to return to work. *New Port News Shipbuilding & Dry Dock Co.*, 841 F.2d 540. 542-43 (4th Cir. 1988); *Bryant v. Carolina Shipping Co., Inc.*, 25 BRBS 294, 296 (1992). Where a claimant seeks benefits for total disability and suitable alternative employment has been established, the earnings established constitute the claimants wage earning capacity. *See Berkstresser v. Washington Metro. Area Transit Auth.*, 16 BRBS 231, 233 (1984).

The Fifth Circuit has articulated the burden of the employer to show suitable alternative employment as follows:

> Job availability should incorporate the answer to two questions: (1) Considering claimant's age, background, etc., what can the claimant physically and mentally do following his injury, that is, what types of jobs is he capable of performing or capable of being trained to do? (2) Within this category of jobs that the claimant is reasonably capable of performing, are there jobs reasonably available in the community for which the claimant is able to compete and which he could realistically and likely secure? This brings into play a complementary burden that the claimant must bear, that of establishing reasonable diligence in attempting to secure some type of alternative employment within the compass of employment opportunities shown by the employer to be reasonably attainable and available.

Turner, 661 F.2d at 1042-43 (footnotes omitted).

Physically, Claimant is limited to sedentary work with a need for a cane to walk. Mentally he has borderline intelligence with a 65 verbal IQ reading on the kindergarten level and

a third grade math ability combined with an inability to drive, age 51, and absence from the work force for 5 years. Considering all those factors vocational expert, Mr. Crane, testified it would be very difficult if not improbable that Claimant could secure employment. I credit Mr. Crane's testimony, as opposed to Mr. Ordes, Nebe and Ms Moffett-Douglas for the reasons stated and find that Employer did not show suitable alternative employment. Thus, Claimant is permanently and totally disabled.

D. Interest

Although not specifically authorized in the Act, it has been an accepted practice that interest, at the rate of six per cent per annum, is assessed on all past due compensation payments. *Avallone v. Todd Shipyards Corp.*, 10 BRBS 724 (1974). The Benefits Review Board and the Federal Courts have previously upheld interest awards on past due benefits to insure that the employee receives the full amount of compensation due. *Watkins v. Newport News Shipbuilding & Dry Dock Co., aff'd in pertinent part and rev'd on other grounds, sub nom. Newport News v. Director, OWCP*, 594 F.2d 986 (4th Cir. 1979). The Board concluded that inflationary trends in our economy have rendered a fixed six per cent rate no longer appropriate to further the purpose of making Claimant whole, and held that ". . . the fixed per cent rate should be replaced by the rate employed by the United States District Courts under 28 U.S.C. § 1961 (1982). This rate is periodically changed to reflect the yield on United States Treasury Bills . . ." *Grant v. Portland Stevedoring Company, et al.*, 16 BRBS 267 (1984).

Effective February 27, 2001, this interest rate is based on a weekly average one-year constant maturity Treasury yield for the calendar week preceding the date of service of this Decision and Order by the District Director. This Order incorporates by reference this statute and provides for its specific administrative application by the District Director.

E. Attorney Fees

No award of attorney's fees for services to the Claimant is made herein since no application for fees has been made by the Claimant's counsel. Counsel is hereby allowed thirty (30) days from the date of service of this decision to submit an application for attorney's fees. A service sheet showing that service has been made on all parties, including the Claimant, must accompany the petition. Parties have twenty (20) days following the receipt of such application within which to file any objections thereto. The Act prohibits the charging of a fee in the absence of an approved application.

V. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law and upon the entire record, I enter the following Order:

1. Employer shall pay to Claimant temporary total disability compensation pursuant to Section 908(b) of the Act for the period from March 31, 2000 to January 8, 2004 based on an average weekly wage of $ 564.80 and a corresponding compensation rate of $376.53.

2. Employer shall pay to Claimant permanent total disability compensation pursuant to Section 908 (a) of the Act for the period from January 9, 2004 to present with appropriate cost of living increases based upon an average weekly wage of $564.80 and a corresponding compensation rate of $376.53.

3. Employer shall be entitled to a credit for all compensation paid to Claimant following his injury of March 31, 2000.

4. Employer shall pay Claimant interest on accrued unpaid compensation benefits. The applicable rate of interest shall be calculated immediately prior to the date of judgment in accordance with 28 U.S.C. §1961.

5. Claimant's counsel shall have thirty (30) days to file a fully supported fee application with the Office of Administrative Law Judges, serving a copy thereof on Claimant and opposing counsel who shall have twenty (20) days to file any objection thereto.

A _

CLEMENT J. KENNINGTON
Administrative Law Judge